

**ALASKA STATE LEGISLATURE  
HOUSE SPECIAL COMMITTEE ON FISHERIES**

March 16, 2021

11:00 a.m.

**MEMBERS PRESENT**

Representative Geran Tarr, Chair  
Representative Louise Stutes, Vice Chair  
Representative Jonathan Kreiss-Tomkins  
Representative Andi Story  
Representative Dan Ortiz  
Representative Sarah Vance  
Representative Kevin McCabe

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 26

"An Act relating to participation in matters before the Board of Fisheries and the Board of Game by the members of the respective boards; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 26

SHORT TITLE: CONFLICT OF INTEREST: BD FISHERIES/GAME

SPONSOR(s): FISHERIES

02/18/21	(H)	PREFILE RELEASED 1/8/21
02/18/21	(H)	READ THE FIRST TIME - REFERRALS
02/18/21	(H)	FSH, RES
02/25/21	(H)	FSH AT 10:00 AM GRUENBERG 120
02/25/21	(H)	-- MEETING CANCELED --
03/12/21	(H)	BILL REPRINTED
03/16/21	(H)	FSH AT 11:00 AM GRUENBERG 120

**WITNESS REGISTER**

THATCHER BROUWER, Staff  
Representative Geran Tarr  
Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Introduced HB 26 on behalf of the House Special Committee on Fisheries, sponsor.

GLENN HAIGHT, Executive Director  
Board of Fisheries  
Boards Support Section  
Alaska Department of Fish and Game  
Juneau, Alaska

**POSITION STATEMENT:** Provided invited testimony regarding HB 26.

FRANCES LEACH, Executive Director  
United Fishermen of Alaska  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 26.

MARK RICHARDS, Executive Director  
Resident Hunters of Alaska  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of HB 26 as currently written.

VIKKI JO KENNEDY  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 26.

MALCOLM MILNE, President  
North Pacific Fisheries Association  
Homer, Alaska

**POSITION STATEMENT:** Testified in support of HB 26.

BEN MOHR, Executive Director  
Kenai River Sportfishing Association  
Soldotna, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 26.

#### **ACTION NARRATIVE**

[11:00:35 AM](#)

**CHAIR GERAN TARR** called the House Special Committee on Fisheries meeting to order at 11:00 a.m. Representatives Vance, Story, McCabe, Kreiss-Tompkins, Ortiz, Stutes, and Tarr were present at the call to order.

**HB 26-CONFLICT OF INTEREST: BD FISHERIES/GAME**

11:01:27 AM

CHAIR TARR announced that the only order of business would be HOUSE BILL NO. 26, "An Act relating to participation in matters before the Board of Fisheries and the Board of Game by the members of the respective boards; and providing for an effective date."

CHAIR TARR pointed out that this legislation was introduced by Representative Stutes at the beginning of the session. Then, on [3/12/21] the House Special Committee on Fisheries made it into a committee bill. She invited Representative Stutes to make opening remarks.

11:02:02 AM

REPRESENTATIVE STUTES shared that she sponsored this legislation as House Bill 87 in the Thirtieth Alaska State Legislature and as House Bill 35 in the Thirty-First Alaska State Legislature. She explained that HB 26 would allow both the Board of Game and Board of Fisheries to benefit from the expertise of their members, facilitating more informed decisions and stronger resource management. The legislation has been well supported over the years. Last year it went as far as the Senate, but the legislature left early [due to the COVID-19 pandemic]. United Fishermen of Alaska has been very supportive of this legislation for 14 years. The bill provides that when a board member is conflicted out, he or she may join in on the conversation and discussion but may not vote.

11:03:39 AM

THATCHER BROUWER, Staff, Representative Geran Tarr, Alaska State Legislature, introduced HB 26 on behalf of the House Special Committee on Fisheries, sponsor. He drew attention to the various documents provided in the committee packet for committee members to consult for background information or help in answering questions. He stated that HB 26 would change the way the Board of Fisheries and the Board of Game function by allowing members to deliberate on the subjects for which they have declared a personal or financial interest according to AS 39, the Alaska Executive Branch Ethics Act ("Ethics Act"). Consistent with current law, the legislation still precludes members with a conflict of interest from voting.

MR. BROUWER noted that board members are currently required to divulge a conflict of interest if they or their immediate family

members are involved in a subject that is being deliberated. The conflicted member can no longer vote or even deliberate on that issue. The Ethics Act defines immediate family member as a spouse, a conjugal co-habitant, child, stepchild, adopted child, parent, sibling, grandparent, aunt, uncle, and spouse's parents and siblings. Title 39 currently prohibits a public officer from taking or withholding official action to affect a matter in which the member has personal or financial interest. Official action is defined as advice, participation, or assistance, including for example a recommendation, decision, approval, disapproval, vote, or other similar actions. In other words, the member cannot deliberate on the topic that is before the Board of Game or Board of Fisheries.

11:06:03 AM

MR. BROUWER said financial interest is defined as interest held by a public officer or immediate family member which includes involvement or ownership in a business that is a source of income, or from which will result in a person receiving or expecting to receive some financial benefit. It also includes holding a position in the business such as an officer, director, trustee, partner, employee, or the like, or holding a position of management in that business. Personal interest is defined as an interest held or involvement by a public officer or the officer's immediate family member, including membership in an organization, fraternal, nonprofit, for profit, charitable, or political, from which or as a result from which a person or organization receives a benefit.

MR. BROUWER stated that HB 26 clarifies that a conflicted member can lend his or her expertise to the discussion while still being unable to vote on that matter. He pointed out that members of the Board of Fisheries and Board of Game are selected based on their "knowledge and ability in the field of action of the board and with a view of providing diversity of interest and points of view in membership." So, he continued, HB 26 would allow those members to share their knowledge and would allow the members of the full board to make the sound resource management decisions with all the available information. Often in the fishing and hunting world, financial or personal interests are tied to knowledge of a particular fishery or hunt. The person with an aunt, uncle, or brother who owns a permit or a guide license or the person who owns a permit or license themselves may be the only person on the board who understands the nuances of what is being discussed. An example of how common it is for a member of the board to recuse themselves is that in the 2017-

2018 Board of Fisheries meeting cycle, a board member had to recuse him/herself from 54 of the 242 proposals that were before the board, that's 22 percent of the time. Both the Board of Fisheries and Board of Game are tasked with allocating Alaska's precious resources.

[11:08:23 AM](#)

REPRESENTATIVE VANCE requested a description of how the changes proposed in HB 26 would affect what legislators are required to disclose or declare as a conflict of interest.

MR. BROUWER replied that HB 26 deals with the Alaska Executive Branch Ethics Act. The Legislative Ethics Act is quite different in that legislators disclose their conflicts of interest but are still allowed to vote on the matter. [Under HB 26], a member of the Board of Fisheries or Board of Game would be able to disclose that information and that would allow them to deliberate, but it would not allow them to vote. So, it would still be more restrictive than the Legislative Ethics Act.

REPRESENTATIVE VANCE posed a scenario in which a board member declares a conflict of interest and asked whether that conflict could be overridden by a majority vote of the board members.

MR. BROUWER offered his understanding that if there is a vote of the majority of members [the conflicted] board member [could be] allowed to participate and to vote. He deferred to Mr. Glenn Haight to provide clarification. In further response, Mr. Brouwer confirmed that HB 26 just allows for deliberation but not a direct vote in the matter.

[11:10:47 AM](#)

The committee took an at-ease from 11:10 a.m. to 11:18 a.m. to address technical difficulties with the online audio system.

[11:18:30 AM](#)

MR. BROUWER provided a sectional analysis of HB 26 as follows: Section 1 would amend AS 39.52.220(b) to allow Board of Game or Board of Fisheries members to take official action, defined by Section 3 of the bill as deliberating but not voting on a matter that they have a personal or financial interest in. Section 2 would amend AS 39.52.220(a) to exempt Board of Fisheries and Board of Game members from the provision in the Alaska Executive Branch Ethics Act that prevents them from deliberating on

matters that they have a personal or financial interest in. Section 3 would amend AS 39.52.220 by adding a new section that allows Board of Fisheries and Board of Game members with a personal or financial interest in a matter to deliberate but not vote [on that proposal or subject being considered by the board]. Section 4 would establish an immediate effective date.

11:19:52 AM

REPRESENTATIVE STORY stated that, generally, she sees the wisdom behind the intent of the bill, and it makes her think about how it works in tandem with appointments to the board - that it should as much as possible represent all the stakeholders because they will be giving their opinions. She noted that statute does not state a certain designation for stakeholders on the board, but that it has been a traditional practice to try to get representation from the different stakeholders. She requested clarification in this regard because she is concerned about assuring that the expertise is balanced, so to speak.

REPRESENTATIVE TARR responded that she can definitively say the statute does not designate representation. She said historical tradition has been to have three commercial positions, three sport positions, and one subsistence position. As well, she added, there has been some geographic historical tradition that more recently has not been as closely followed.

REPRESENTATIVE STUTES said that when working on this legislation there was tremendous pushback on those issues. It was therefore decided that the most important thing was to allow for the area of expertise to participate and she backed away from [including either of the two historical traditions in the bill].

REPRESENTATIVE STORY expressed her hope that the practice would be upheld by administrations.

11:22:12 AM

REPRESENTATIVE KREISS-TOMKINS commented that he is robustly supportive of HB 26.

11:22:36 AM

REPRESENTATIVE STUTES added that HB 26 allows a little more transparency because when an individual is excluded from giving his or her area of expertise the member still does it, but just

not in public. The bill would therefore provide the public with more transparency.

11:23:19 AM

GLENN HAIGHT, Executive Director, Board of Fisheries, Boards Support Section, Alaska Department of Fish and Game (ADF&G), provided invited testimony regarding HB 26. He noted that the Boards Support Section facilitates the work of the Board of Game and Alaska's 80-plus locally led fish and game advisory committees. He stated that the Ethics Act factors heavily into the board meeting process. Prior to board meetings the members are encouraged to review the proposals, which can number between 20 and 200 proposals, and see whether they have any potential conflicts. To the extent they do, members are encouraged to work with the chair who is the ethics supervisor for the board and to also work with the attorney general's office to figure things out so that coming into a meeting members know which proposals they likely will be conflicted out of. At the start of every meeting, ethics disclosures are made and handled there. It is not unusual for there to not be any conflicts, there is often a couple, but occasionally there are dozens.

MR. HAIGHT drew attention to page 4 of the background document on the Ethics Act process and stated that the Board of Fisheries has many more allocative monetary issues than does the Board of Game, which is what creates a lot of those conflicts. For the Board of Fisheries, he noted that every three years starting from 2005/2006 a bit of a bump can be seen in the number of recusals, which is the Southeast finfish meeting. He related that the board has a longstanding member from Petersburg who has family members in the commercial fisheries and the member has a few permits as well, which creates dozens of recusals for that one individual at that meeting. So, it can be seen from this document how this impacts meetings from year to year and that it depends on the subject matter and the board members.

11:25:55 AM

MR. HAIGHT spoke to personal and financial conflicts. He said he has not seen many personal conflicts but recalled one where a board member's brother was an attorney who worked for a corporation that had crafted a proposal and the brother was advocating for the proposal at the board meeting. The board member recused himself from anything dealing with that proposal. The other example was where a board member's wife was testifying for her corporation against a proposal. The chair found that

that created a personal conflict and in that instance the board member did not agree. When that happens, the determination can be challenged and then it's up to the rest of the board to vote on it. At that specific meeting the individual was recused from that proposal. That starts to address Representative Vance's question, Mr. Haight continued, about whether a board can override an ethics conflict. Once a conflict is determined a board member needs to step down. He said he has not seen a time where a conflict has been determined, a board member agrees he or she is conflicted, and the rest of the board votes to allow them - that does not happen. The board member can challenge a determination and then the board must vote on that, but once someone is conflicted out, he or she is not participating.

MR. HAIGHT said financial conflicts are much more common. He advised that here is not a lot of case law that helps guide the Ethics Act and how the boards work with it. But, he continued, one court finding said that there is a threshold of \$5,000 and when that is approached it meets the threshold of substantial. So, when reviewing proposals board members will think about whether it can impact them to that extent, but it isn't hard and fast and board members are challenged in figuring out whether they have a potential conflict.

MR. HAIGHT stated that meetings are fairly standard - there are always introductions, ethics disclosures, staff reports, and public testimony. He said the Board of Fisheries has committees that go through each proposal with the participants and then there are deliberations. The way conflicts of interest are currently treated is that board members who have an ethics conflict will stay at the table through staff reports and public testimony, but once into committee or deliberation a conflicted individual will stand up and go to the audience or remove himself or herself from the table. He offered his understanding that under HB 26 conflicted board members would simply stay at the table and be able to ask questions through the deliberations and participate in discussing the merits, but simply could not vote.

[11:29:36 AM](#)

FRANCES LEACH, Executive Director, United Fishermen of Alaska (UFA), testified in support of HB 26. She noted that UFA is the largest commercial fishing organization in Alaska, composed of 37 multi-gear and regional commercial fishing groups. She stated that for over 10 years UFA has supported the conflict-of-interest bill for the Board of Fisheries and Board of Game.



MS. LEACH related that before coming to UFA she worked several years for the Board of Fisheries. From attending over 50 meetings of the Board of Fisheries and Board of Game, she said she has seen firsthand how this bill would be beneficial to the board and public process that these boards are known for. Currently, a board member with a conflict on a proposal is not allowed to participate in the deliberations. Yet, Board of Fisheries and Board of Game members are chosen by the governor to represent their region and because they have expertise in fisheries, be it sport, commercial, subsistence, or a science background in fisheries. For comparison, she posed a scenario in the legislature of a committee holding a hearing on a bill to rename a bridge in a town within a legislator's district. She pointed out that if the legislature followed the Board of Fisheries and Board of Game rules, the legislator for that district would be asked to leave the table and go sit with members of the public, unable to weigh in or provide any insight. When fellow legislators asked questions about the bridge the legislator would not be able to answer. She said this is what is happening on the Board of Fisheries and Board of Game right now. Ms. Leach attested that she has seen what Director Haight described where board members talk to the board members who have been conflicted out and ask them about their insight, all of which is off the record. It would be so much better, she maintained, to have these discussions on the record before the public and for all board members to benefit from.

[11:31:55 AM](#)

MS. LEACH addressed the other objective brought up by Representative Story about getting board members from different regions and qualified board members. She said UFA is often trying to find good candidates for the Board of Fisheries whose names can be provided to the governor. However, UFA often hears that people don't want to put their names in because they know they are going to conflict out on most of the proposals, for which board member John Jensen is a great example. In Southeast Alaska she has seen Mr. Jensen conflict out of many proposals, yet he is the expert for Southeast and is supposed to be the voice. It's a shame, she continued, because people making decisions for Alaska's precious wildlife and fishery resources should be qualified and bringing expertise to the table; they should not be muted.

MS. LEACH noted that HB 26 would not allow the board members to vote. It would just allow them to share their knowledge and

expertise during transparent deliberations, which would benefit everyone. This bill will benefit all user groups, she added, not just commercial fishermen. She concluded by stating that UFA looks forward to continuing its support of HB 26.

11:33:17 AM

REPRESENTATIVE KREISS-TOMKINS asked whether a board member who is conflicted out can move to the public seating at that meeting and then come forward as a member of the public to testify on proposals.

MS. LEACH offered her belief that that has happened in the past, but that the member could not offer comment during the deliberations. She deferred to Mr. Haight to provide a definitive answer.

MR. HAIGHT responded that board members are advised that if they are recused, they may provide public testimony. He also noted that a recused Board of Fisheries member can engage in that board's committee process, but he hasn't seen it happen a lot.

11:34:54 AM

MARK RICHARDS, Executive Director, Resident Hunters of Alaska (RHAK), testified in support of HB 26 as currently written. He stated that RHAK is a hunting conservation organization with about 3,000 members that advocates for resident hunting priority. He noted that RHAK supported this legislation during the last session. He said he is well versed in what goes on at meetings because for the past 15 years he has attended every Board of Game meeting for RHAK and has attended various Board of Fisheries.

MR. RICHARDS advised that the problem the bill's sponsor is trying to correct is that the member of either board who has a conflict is often the most knowledgeable about that specific proposal, and the fish or wildlife resource, and should be allowed to at least participate in the on-the-record deliberations while still being recused from voting. There should be no allusions of what goes on when members of either board are not on the record, he added, members speak to one another privately on issues before them. For example, when a member is conflicted out because he or she commercial fishes in an area that a proposal seeks to modify, it is only prudent to ask that member for his or her thoughts about that fishery resource, harvest limits, catches, and allocations. He

maintained that having those discussions on the record among all board members during deliberations would benefit everyone and give the public a better understanding of the issue. However, Mr. Richards clarified, RHAK does not support allowing members with a conflict of interest to vote on that proposal.

[11:37:18 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked whether RHAK has supported previous iterations of this legislation.

MR. RICHARDS replied yes, RHAK supported the legislation during the last session.

[11:38:01 AM](#)

REPRESENTATIVE TARR opened public testimony on HB 26.

[11:38:12 AM](#)

VIKKI JO KENNEDY, testified in support of HB 26. She said she agrees that [conflicted board members] should not be able to vote, but that their expertise is needed.

[11:39:57 AM](#)

MALCOLM MILNE, President, North Pacific Fisheries Association (NPFA), testified in support of HB 26. He noted that NPFA is a commercial fishing industry group based in Homer, comprised of about 80 members. He said NPFA has supported this legislation all along in its different versions and continues to support the bill in its current version of HB 26. He said he echoes all the information that has been provided in favor of HB 26 and urged the bill be moved forward.

[11:41:00 AM](#)

BEN MOHR, Executive Director, Kenai River Sportfishing Association (KRSA), testified in opposition to HB 26. He stated that KRSA does not see the need at present to modify the longstanding ethical guidelines that are applied to an allocative body like the Board of Fisheries. He said the current conflict of interest procedures already allow for a conflicted board member to participate in the public process and arguably to a greater degree than the public on matters where the member has a direct financial interest.

MR. MOHR maintained that formal deliberations are the part to emphasize within the process of how proposals move through a board meeting. He likened the formal deliberation as the closing argument on a matter - the final opportunity for board members to sway one another and the time to assure that all the boxes are checked off for the board's legal obligations. Allowing a conflicted member to participate to a greater degree in deliberations, he stated, could have impact on how the actual proposal is implemented long term.

MR. MOHR asserted that HB 26 would expand the influence of board members who have direct financial interest in matters under consideration. He said current conflict procedures are not new, unknown, nor untested because they have been in place a long time and have been reasonably effective. He expressed KRSA's belief that loosening the long-standing ethical guidelines for this allocative body is not in the public interest.

[11:43:10 AM](#)

REPRESENTATIVE TARR closed public testimony after ascertaining no one else wished to testify.

[11:44:16 AM](#)

REPRESENTATIVE VANCE noted there has been concern about undue influence. For example, as stated by the last witness, passage of HB 26 would give board members influence on decisions. But, she continued, as stated by an earlier witness, questions are asked off the record and deliberations among board members occur because of that board member's expertise on the topic under deliberation. She asked whether there are ethical repercussions if someone were to witness these deliberations off the record.

MR. HAIGHT replied that he does not personally get involved in discussions about proposals with board members, so he does not have any direct experience on that. He cited the Open Meetings Act, which for the Board of Fisheries prevents more than four board members from getting together off the side and talking about things. But, he continued, he doesn't know that there is anything that prevents a board member who has been recused from talking about it off to the side. He said he doesn't fully know what the answer is to Representative Vance's question.

REPRESENTATIVE VANCE commented that all kinds of stories are heard about what goes on regarding members' deliberations and influence. She said it seems that HB 26 would provide more

transparency to the public if these discussions were on the record, so she finds it interesting that there is opposition to having this on the record, yet the conflicted members can still provide public testimony. She offered her hope that this complicated process can be simplified and provide transparency for everyone involved.

[11:46:53 AM](#)

[HB 26 was held over.]

[11:47:19 AM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 11:47 a.m.